STATE OF MICHIGAN

COURT OF APPEALS

BRIAN BURNSIDE,

Plaintiff/Counter-Defendant-Appellee,

v

BURNSIDE ACQUISITION, LLC,

Defendant/Counter Plaintiff-Third Party Plaintiff-Appellee,

and

RHODES MCKEE, PC,

Third Party Defendant/Appellee,

and

STEPHEN K VALENTINE, JR, PC, d/b/a VALENTINE & ASSOCIATES,

Third Party Defendants/Appellants,

and

MICHIGAN DEPARTMENT OF TREASURY and VARNUM RIDDERING SCHMIDT & HOWLETT, LLP,

Third Party Defendants

UNPUBLISHED
April 24, 2012

No. 304147
Kent Circuit Court
LC No. 10-05825-CK

Before: BECKERING, P.J., and OWENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

In this case, third-party defendants Stephen Valentine and Valentine & Associates appeal the trial court's denial of their motion for summary disposition pursuant to MCR 2.116(C)(10). The motion sought to impose an attorney's lien and to recover fees and costs. We affirm.

We review a trial court's interpretation and application of a court rule de novo. *Wilcoxon v Wayne Co Neighborhood Legal Servs*, 252 Mich App 549, 553; 652 NW2d 851 (2002). Additionally, this Court reviews a trial court's decision to grant or deny summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "In making this determination, the Court reviews the entire record to determine whether defendant was entitled to summary disposition." *Id.* Furthermore, an arbitrator exceeds his or her authority by acting outside the terms of the contract or by contravening controlling principles of law. *Krist v Krist*, 246 Mich App 59, 62; 631 NW2d 53 (2001). However, in evaluating whether an arbitrator exceeded his or her authority, the courts must be careful to refrain from reviewing the merits of a claim. *Gordon Sel–Way, Inc v Spence Bros, Inc*, 438 Mich 488, 497; 475 NW2d 704 (1991). The courts may not speculate as to why an arbitrator ruled in a particular way; an alleged error of law may also be attributable to improper or unwarranted factual findings, and unless an alleged error of law is apparent from the face of the award, the award must be upheld. *DAIIE v Gavin*, 416 Mich 407, 428–429; 331 NW2d 418 (1982).

First, the trial court was correct in dismissing defendants' motion as untimely. Despite defendants' attempts to characterize their motion as being a motion for summary disposition rather than a motion to vacate, correct, and/or modify the arbitrator's award, it is clear that the motion was filed for the later purpose. The arbitrator specifically found that defendants were not entitled to attorney fees in this case, thus relief cannot be granted to defendants without modifying the arbitrator's award.

Defendants' motion was untimely because the trial court issued a scheduling order that required that a motion to vacate, correct and/or modify the award of attorney fees had to be filed within 91 days. MCR 3.602(J)(3) and MCR 3.602(K)(2) allow a circuit court to vacate or modify an arbitration award, but only on a motion filed within 91 days after the date of the award. *Cipriano v Cipriano*, 289 Mich App 361, 378–379; 808 NW2d 230 (2010) (trial court erred by modifying an award where party failed to follow timing requirements of MCR 3.602); see also *Vyletel–Rivard v Rivard*, 286 Mich App 13, 22; 777 NW2d 722 (2009) (involving 21–day period for domestic relations cases). Defendants did not make a motion within 91 days as required by MCR 3.602(J)(3) and (K)(2).

Defendants' argument that they should not be subject to this order because they did not receive a copy of the scheduling order is without merit. Defendants were parties to this action, and had access to all of the court's orders. Furthermore, the trial court held a hearing on October 26, 2010 wherein it specifically stated that motions to vacate, correct, or modify the arbitrator's final award must be made within 91 days from the date of the final award. Defendants were parties to the case at this point, and the trial court docket indicates that they received a copy of this order. Additionally, the record also contains a copy of the proof of service of this order.

In addition to defendants' motion being untimely it was also substantively without merit. MCR 3.602 governs judicial review and enforcement of statutory arbitration agreements. MCR 3.602(J)(2) provides that a trial court may only vacate an arbitration award if one of the following occurs:

(a) the award was procured by corruption, fraud, or other undue means;

> (b) there was evident partiality by an arbitrator, appointed as a neutral, corruption of an arbitrator, or misconduct prejudicing a party's rights;
>
> (c) the arbitrator exceeded his or her powers; or
>
> (d) the arbitrator refused to postpone the hearing on a showing of sufficient cause, refused to hear evidence material to the controversy, or otherwise conducted the hearing to prejudice substantially a party's rights.

"By narrowing the grounds upon which an arbitration decision may be invaded, the court rules preserve the efficiency and reliability of arbitration as an expedited, efficient, and informal means of private dispute resolution." *Gordon Sel–Way, Inc*, 438 Mich at 495.

An arbitration award will be vacated because an arbitrator exceeded his powers through an error of law when it "clearly appears on the face of the award or the reasons for the decision as stated, being substantially a part of the award, that the arbitrators through error of law have been led to a wrong conclusion, and that, but for such error, a substantially different award must have been made." *Howe v Patrons' Mut Fire Ins Co of Mich*, 216 Mich 560, 570; 185 NW 864 (1921). This standard precludes the trial court from review of the arbitration award on the basis that it was against the great weight of the evidence or was not supported by substantial evidence. *Donegan v Michigan Mut Ins Co*, 151 Mich App 540, 549; 391 NW2d 403 (1986). Arbitration awards "are given great deference, and courts have stated unequivocally that they should not be lightly set aside." *Bell v Seabury*, 243 Mich App 413, 421–422; 622 NW2d 347 (2000). The Court's role in reviewing an arbitrator's decision is limited, and we may vacate an award only under narrowly defined circumstances. *Id.* at 422 n 4.

The arbitrator made factual findings with regard to defendants' involvement in the instant lawsuit: that their efforts were "minor," and that Rhoades McKee's efforts resulted in Burnside's recovery. A court may not review an arbitrator's factual findings, *Lenawee Co Sheriff v Police Officers Labor Council*, 239 Mich App 111, 118; 607 NW2d 742 (1999). Courts are reluctant to vacate or modify an arbitration award because of the difficulty or impossibility of determining the cause for the arbitrator's ruling. *Gavin*, 416 Mich at 429. Defendants do not make an argument that the arbitrator exceeded his authority in making this award. Considering the extremely high bar set by Michigan case law for overturning an arbitrator's decision, the trial court and our Court's inability to review factual findings, and defendants' failure to argue any legal issue with respect to the matter of overturning the arbitrator's decision, we conclude that even if defendants' motion had been timely, it would certainly have been unsuccessful.

Lastly, defendants argue that they are entitled to an attorney lien on the money awarded by the arbitrator. However, if an attorney withdraws from a case and is justified in doing so, the attorney lien is enforceable only in quantum meruit. *Id.* at 23-24. *Reynolds v Polen*, 222 Mich App 20, 23; 564 NW2d 467 (1997). Defendants' argument that they are entitled to the reasonable value of their services could possibly have merit, however defendants never raised this issue in the trial court, nor did the trial court address it. Furthermore, defendants have provided no evidence regarding the reasonable value of the services provided to Burnside, making our review of this issue impossible. Defendants merely request $37,550, which is the precise amount that they would have collected under their contingency fee agreement, had they

actually done the entirety of the work in the case. Quantum meruit ("as much as he has deserved") is an equitable principle of restitution based on the doctrine of unjust enrichment. See *In re McKim Estate*, 238 Mich App 453, 458; 606 NW2d 30 (1999); Farnsworth, Contracts (1990), § 2.20 at 102-103. Compensation on a theory of quantum meruit should "cover [ ] only such services as produced definite valuable results." *Rippey v Wilson*, 280 Mich 233, 246; 273 NW 552 (1937). Further, the benefit conferred must be measurable. Farnsworth, *supra* at § 2.20 at 109. Therefore, defendants' argument that they are entitled to compensation under a theory of quantum meruit is unsupported and without merit.

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Amy Ronayne Krause